

Business Objectives for UNCAC

Statement by the Global Business Community to the Second Conference of the States Parties to the United Nations Convention against Corruption, Nusa Dua, Indonesia, 28 January – 1 February 2008

Representatives of the global business community¹ participating in the Second Conference of the States Parties to the United Nations Convention against Corruption (UNCAC) in Nusa Dua, Indonesia, 28 January-1 February 2008, are pleased to submit the following statement on what business considers as fundamental conditions which have to be fulfilled to ensure the successful implementation of UNCAC.

1. Time is of the essence: One should not lose momentum

The First Conference of the States Parties to the United Nations Convention against Corruption agreed “*that it [was] necessary to establish an appropriate and effective mechanism to assist in the review of the implementation of [UNCAC]*”. It decided to establish an open-ended intergovernmental expert working group on monitoring and requested this working group to make recommendations to the Second Conference.

Business considers that the necessary preparatory work has been done and therefore expects the States Parties now to act decisively and swiftly on the establishment of an effective follow-up monitoring program, as business is convinced that the Convention’s success will depend on the existence of a realistic mechanism for controlling the effective and consistent implementation of UNCAC’s provisions on the ground.

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UNCAC was drafted and negotiated in a very short span of time. It took not much time after signature in Merida for the instrument to enter into force. The pace of ratification was impressive and UNCAC is now signed by 140 countries and ratified by 107. Any further delay on the conception, decision, launching and implementation of a monitoring mechanism could paralyze the process for a long time.

¹ Representatives of the following organizations have participated in the elaboration of this document: the International Chamber of Commerce, the World Economic Forum’s Partnering Against Corruption Initiative, the Global Compact and Transparency International’s Secretariat of Business Principles against Corruption.

2. Nature and operation of the monitoring mechanism

The First Conference gave very valuable indications in its First Resolution as to the nature and operation of the monitoring mechanism to be set up. The open-ended intergovernmental expert working group has added a number of valuable additional criteria.

Business can only repeat what it already declared in Jordan, namely that the program should be based on self-evaluation and peer reviews, that it will require a strong secretariat and dependable funding from the UN budget, and that it should start with a survey of implementation and effective technical assistance. We further recommend that, given the number of countries involved and the wide scope and complexity of UNCAC's provisions, the review of country implementation should be based on specific themes and specific articles. The results from existing monitoring of anti-corruption conventions should be integrated in the UNCAC monitoring process. Indeed, the UN monitoring mechanism should work cooperatively with the monitoring mechanisms of other anti-corruption conventions.

Monitoring of UNCAC should cover both binding and non-binding provisions of the Convention, including the key issue of solicitation. Special consideration must be given to the Convention's pillar on "Preventive Measures" since without proper institutions, such as a fair and functioning criminal justice system, independent anti-corruption bodies, and a growing anti-corruption culture among the public and private sectors, there is no hope of seeing the Convention bring about change.

It is the global business community's view that monitoring should be seen as a continuous exercise and should follow the implementation of the recommendations given in the country reviews. The review mechanism should also monitor the steps that are being taken to ensure that the provisions of the Convention are not being abused or misinterpreted. In this respect, one of the objectives of monitoring should be to assure the availability of procedural safeguards to mitigate concerns about arbitrary actions.

Participation by business in the monitoring of UNCAC, especially during on-site visits, will be essential to provide a complete picture of country progress in implementing and enforcing the Convention.

3. Unabated economic fraud

Several specialized surveys show that economic fraud is not abating, on the contrary, while extortion and bribery continue to undermine open and fair competition, thereby penalizing legitimate market participants. The worsening of world economic conditions could signal further and bigger threats to integrity in the market practice. Therefore, the fight against corruptive practices should be a top priority, particularly now on all political agendas and for all corporate executives. Achieving equal conditions for transparency and integrity in doing business in all countries over the world is of paramount importance and is a matter of high urgency both for the private and the public sector.

4. Enterprises make their contribution through codes of conduct and integrity programs

Enterprises, for their part, have been working hard over the years at formulating codes of conduct and at implementing, improving and maintaining fully-fledged integrity programs, with the intention of creating a genuine integrity culture within their organizations. They have developed, either individually enterprise by enterprise, on a sectoral basis or on a multi-sectoral basis, professional integrity standards and procedures designed to safeguard integrity. Enterprises are motivated to do so by their desire to contribute to the creation of a corruption-free market. Companies feel encouraged in their self regulating efforts by the recommendations of the G8 Summits, and are comforted by the provisions of several international anti-corruption instruments, and notably of UNCAC.

Business organizations have started reviewing their anti-corruption rules and recommendations with the aim of achieving between them the highest possible degree of harmonization, while at the same time aligning their self regulatory texts with the provisions of UNCAC. The commitment of world business to fight corruption worldwide is illustrated by the very large number of companies supporting ICC, the UN Global Compact, the World Economic Forum's Partnering Against Corruption Initiative and TI's Secretariat of Business Principles Against Corruption, in their combat against extortion and bribery.

5. Reference to the First Statement by the Global Business Community made in Jordan

The global business community was already present at the First Conference of the States Parties to the United Nations Convention against Corruption in Jordan, 10-14 December 2006. At this occasion, business was granted the opportunity to express to the Conference of the States Parties the objectives it saw for a sustainable implementation of the Convention provisions.

The entirety of the statement which was made at the time is still valid today and one will usefully refer to it. We reiterate our message as to the need for a genuine and thorough monitoring mechanism of the Convention provisions and for the rest refer to those parts of our statement concerning (i) the need for technical assistance especially to countries suffering from weak institutions and budgetary constraints and concerning (ii) the necessary application of due process and the granting of legal and procedural safeguards in asset recovery operations.

6. The promise of a level playing field

In its first statement, the global business community recalled its early approval of UNCAC and the fact that it had - already at the time of its drafting and negotiation - welcomed the UN Convention as "*holding the potential to become the global framework for combating corruption, which will pave the way for the establishment of a level playing field for all market participants.*" Business particularly appreciates that UNCAC prohibits all forms of corruptive practices: active as well as passive, national as well as international, public as well

as private-to-private, direct as well as indirect. All forms of corruption distort competition and should be equally and vigorously condemned.

In addition, there is increasing recognition that markets in developing countries will be of key importance for the growth of the world economy. This enhances the importance of UNCAC, because UNCAC provides the best hope for combating corruption and improving transparency and accountability in developing countries. Efforts should be made between countries in the north and south to share experience and to bring added value to corporate practice in this respect.

The existing regional anti-corruption conventions and instruments continue to have all their relevance and importance and should be, also in the future, actively supported, but only a truly global convention will reassure enterprises doing business in multiple jurisdictions that they will be able to play their entrepreneurial role everywhere in conditions of fairness and integrity.